
(2021) 09 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 7801 Of 2021 & IOIN CRWP No. 8539 Of 2021

Harwinder Kaur And Anr

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 20-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Indian Penal Code, 1860 — Section 376(2)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2021) 09 P&H CK 0047

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Arvind Singh Sangwan, J

While disposing of the main petition, the following order was passed on 09.09.2021:

"The petitioners have approached this Court, by way of filing the present petition under Articles 226/227 of the Constitution of India, seeking protection of their life and liberty on the premise that petitioner No.1 has performed marriage with petitioner No.2 against the wishes of her parents and other family members and the petitioners are apprehending threat to their life and liberty at their instance.

Notice of motion.

On asking of the Court, Mr. Joginder Pal Ratra, DAG, Punjab and Mr. Rishu Mahajan, Advocate and Mr. Sanjeev K. Virk, Advocate accept notice on behalf of the private respondents i.e. respondent Nos. 4 to 7.

Learned State counsel as well as Learned counsel for the private respondents submits that petitioner No. 2 Bhupinder Singh has filed a false affidavit by concealing his marital status and by stating that it is the first marriage of both

the petitioners in para 10 of the petition as well as in the affidavit of petitioner No. 2, however, a perusal of the petition shows that no affidavit has been filed by petitioner No. 2.

Learned counsel for the private respondents further submits that petitioner No. 2 was earlier married to one Ruby daughter of Ram Pal, resident of Mohalla Ramdaspur, District Jalandhar and has placed on record the photographs and marriage certificate in this regard, which shows that the said marriage was performed on 10.05.2019 at Gurdwara Shri Amar Darbar, Shergarh Katcha Road, Hoshiarpur and by concealing the said fact, the present petition has been filed.

Learned State counsel submits that even petitioner No. 2 is involved in a case under Section 376(2) IPC and he is facing trial.

Vide order dated 25.09.2020 passed in CRWP- 6912-2020, this Court, on earlier occasion also, has directed all the SHOs to keep a check over the registers maintained by all the Pandits/Granthis, who are performing such type of marriages and verify that a declaration is made by both the persons that they are unmarried, however, it appears that the instant marriage certificate (Annexure P-3) has been prepared by the Granthi of Gurdwara Guru Nanak Niwas Sahib, village Karor Kalan, Tehsil Kharar, District Mohali without following the instructions.

Accordingly, the present petition is hereby dismissed.

The SHO, Police Station Kathgarh, District S. B. S. Nagar is directed to take appropriate action in this regard.

The Registry is directed to explain as to how this petition was passed without there being the affidavits of both the petitioners.

The explanation be sent within a period of seven days from today."

In pursuance thereof, the Registry has put the present note in Urgent List along with the relevant High Court Rules & Orders and it is submitted that since the affidavit of one of the petitioners was annexed, the present case was passed. A reference is made to Criminal Procedure Code that no provision regarding filing of affidavit has been provided. It is further submitted that in Chapter 1, Part E of the High Court Rules & Orders Vol. V, under the head 'the Making and Filing of Affidavits in the High Court, the following provisions are provided:

1. Form and Attestation of Affidavits:- Affidavits intended to be presented in the High Court in support of an assertion of any fact shall be drawn up and attested in the manner prescribed in Chapter 12 of Volume IV of High Court Rules and Orders. Such affidavits shall be sworn before some Court or Officer appointed to administer the oath to the deponent. If the affidavit is in a language other than English, then its translation in English shall also be filed in Court."

2. When affidavits necessary:- When a memorandum of appeal, cross-objection, petition or application in any proceeding in the High Court contains an assertion

of any fact or facts contrary to or outside the record or not supported by evidence already on record, such assertion shall be supported by one or more affidavits.

3. Affidavits when to be presented:- Such affidavit shall ordinarily be presented with the memorandum of appeal, crossobjection, application or petition.

4. Effect of absence of affidavit:- Any ground contained in any such memorandum of appeal, cross- objection, application, or petition containing an assertion of fact not supported by affidavit may on the hearing thereof be ordered, by the Judge or Bench to be struck out or amended summarily, unless leave be granted to present an affidavit in support thereof.

Since a large number of such or similar petitions, praying for protection to the life and liberty are filed on the basis of a claim that the marriage performed by the petitioners is against the wishes of their parents or in cases where the parties claim to be in a live-in-relationship or in cases, where one of the petitioners is a minor and has not attained the marriageable age as per The Prohibition of Child Marriage Act, 2006, the lawyers intentionally file the affidavit only of the petitioner, who is legally competent to file the same, in order to avoid deposing the correct description of the marital status as well as the age of another petitioner.

In the present case, petitioner No. 2, who was already married, by not filing the affidavit, had concealed his marital status and, therefore, it would be appropriate to issue a direction to the Registry that w.e.f. 01.11.2021, all the cases in the category of criminal writ petition, filed under Articles 226/227 of the Constitution of India or under Section 482 Cr.P.C. seeking issuance of a writ of Mandamus directing the official respondents to protect the life and liberty of the petitioners at the hands of private respondents, who are the parents or relatives of the petitioners, on the basis of so called marriage or on the basis of live-in-relationship (irrespective of their caste or religion), should be passed only when both the petitioners have filed their respective affidavit mentioning their date of birth as well as marital status, irrespective of the fact that they are claiming to be in a live-in-relationship.

The matter be put up before the Registrar General of this Court for issuance of necessary directions and action.

Disposed of.